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8 UNITED STATES BANKRUPTCY COURT

9 NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

10 In re

Case No.09-31819-TEC

11 MARILYN H. REVERENTE ,

Chapter 7

12 Debtor(s).

13 MOTION FOR RELIEF FROM
AUTOMATIC STAY
(11 U.S.C. § 362 and Bankruptcy Rule 4001)

14 Property: 3675 Squirrel Street
Las Vegas, Nevada 89122

15 Position: First Deed of Trust

16 DATE: September 21, 2009
TIME: 1:00 p.m.
17 CTRM: 23

18 19 235 Pine Street, 19th Floor
San Francisco, CA 94104

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21 Bank of America, National Association ("Movant"), moves this court for an order
22 terminating the automatic stay of 11 U.S.C. § 362 as to Movant, so that Movant may commence
23 and continue all acts necessary to enforce its security interest in real property generally
24 described as 3675 Squirrel Street, Las Vegas, Nevada 89122.

25 On or about June 30, 2009, Marilyn H. Reverente ("Debtor") filed a voluntary petition
26 under Chapter 7 of the Bankruptcy Code, and Janina M. Elder was appointed as Chapter 7
27 Trustee. As a result of said filing, certain acts and proceedings against Debtor and the
28 bankruptcy estate are stayed as provided in 11 U.S.C. § 362.

1 Movant moves this court for relief from stay under 11 U.S.C. §§ 362(d)(1) and
2 362(d)(2).

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I.**

5 **MOVANT IS ENTITLED TO RELIEF FROM THE**
6 **AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(2).**

7 **NO EQUITY**

8 11 U.S.C. § 362(d)(2) provides that relief from the automatic stay shall be granted if the
9 debtor does not have any equity in the property and the property is not necessary to the debtor's
10 effective reorganization.

11 In In re San Clemente Estates, 5 B.R. 605 (Bankr. S.D. Cal. 1980), the court stated that:
12 § 362(d)(2) reflects congressional intent to allow creditors to
13 immediately proceed against the property where the debtor has no
14 equity and it is unnecessary to the reorganization, even where the
15 debtor can provide adequate protection under § 362(d)(1).
16 (Emphasis added).

17 *Id.* at 610 (emphasis added).

18 In In re Mikole Developers, Inc., 14 B.R. 524, 525 (Bankr. E.D. Pa. 1981), the court
19 stated that in determining whether equity exists in the property for purposes of § 362(d)(2), all
20 encumbrances are totalled, whether or not all the lienholders have joined in the request for relief
21 from stay. The Ninth Circuit has concurred with this view in Stewart v. Gurley, 745 F.2d 1194
22 (9th Cir. 1984).

23 An appropriate cost of sale factor should also be added to determine if the debtor has
24 any equity in the property. La Jolla Mortgage Fund v. Rancho El Cajon Associates, 18 B.R.
25 283, 289 (Bankr. S.D. Cal. 1982).

26 On or about April 26, 2006, Debtor, for valuable consideration, made, executed and
27 delivered to Wells Fargo Bank, N.A. ("Lender") a Note in the principal sum of \$240,000.00
28 (the "Note"). Pursuant to the Note, Debtor is obligated to make monthly principal and interest
 payments commencing June 1, 2006, and continuing until May 1, 2036, when all outstanding
 amounts are due and payable. The Note provides that, in the event of default, the holder of the

1 Note has the option of declaring all unpaid sums immediately due and payable. A true and
2 correct copy of the Note is attached to the Declaration in Support of Motion for Relief From
3 Automatic Stay as exhibit A and incorporated herein by reference.

4 On or about April 26, 2006, the Debtor made, executed and delivered to Lender a Deed
5 of Trust (the "Deed of Trust") granting Lender a security interest in real property commonly
6 described as 3675 Squirrel Street, Las Vegas, Nevada 89122 (the "Real Property"), which is
7 more fully described in the Deed of Trust. The Deed of Trust provides that attorneys' fees and
8 costs incurred as a result of the Debtor's bankruptcy case may be included in the outstanding
9 balance under the Note. The Deed of Trust was recorded on May 3, 2006, in the Official
10 Records of Clark County, State of Nevada. A true and correct copy of the Deed of Trust is
11 attached to the Declaration in Support of Motion for Relief From Automatic Stay as exhibit B
12 and incorporated herein by reference.

13 Subsequently, all beneficial interest in the Note and the Deed of Trust was sold,
14 assigned and transferred to Movant. A true and correct copy of the Corporation Assignment of
15 Deed of Trust evidencing the Assignment of the Note and Deed of Trust to Movant is attached
16 to the Declaration in Support of Motion for Relief From Automatic Stay as exhibit C and
17 incorporated herein by reference.

18 The obligation under the Note is in default as of January 1, 2009, for failure to make
19 payments to Movant. As of July 17, 2009, the total obligation due and owing under the Note is
20 in the approximate amount of \$251,612.53, representing the principal balance of \$239,816.30,
21 interest in the sum of \$9,333.04, late charges in the amount of \$535.80, escrow advances in the
22 amount of \$1,772.39, a recoverable balance in the amount of \$125.00, and other fees in the
23 amount of \$30.00. This is an approximate amount for purposes of this Motion only, and should
24 not be relied upon as such to pay off the subject loan as interest and additional advances may
25 come due subsequent to the filing of the Motion. An exact payoff amount can be obtained by
26 contacting Movant's counsel. Further, Movant has incurred additional post-petition attorneys'
27 fees and costs in bringing the instant Motion. Moreover, the total arrears under the Note are in
28 the approximate sum of \$12,517.83, excluding the post-petition attorneys' fees and costs

1 incurred in filing the instant Motion. A true and correct copy of the contractual payment
2 accounting pursuant to Local Rule 4001-1(g)(1) is attached to the Declaration in Support of
3 Motion for Relief From Automatic Stay as exhibit D and incorporated herein by reference.

II.

RELIEF FROM STAY

LACK OF EQUITY

Movant is informed and believes that, based on the Debtor's bankruptcy Schedules and Statements, the fair market value of the Property is approximately \$174,000.00. True and correct copies of the Debtor's bankruptcy Schedules "A" and "D" are collectively attached to the Declaration in Support of Motion for Relief From Automatic Stay as exhibit E and incorporated herein by reference.

Based on the above, Movant maintains that the equity in the Property is as follows:

13	Fair Market Value:	\$174,000.00
14	Less:	
	Movant's Trust Deed	\$251,612.53
15	Wells Fargo's 2 nd Trust Deed	\$30,000.00
	Sunrise Ridge Thorobred HOA Dues	\$900.00
16	North Nevada Property Tax Lien	\$1,685.00
	Costs of Sale (8%)	\$13,920.00
17	Equity in the Property:	\$<124,117.53>

19 Debtor's Statement of Intent indicates it is the intent of the Debtor to surrender the Real
20 Property in full satisfaction of Movant's secured claim. A true and correct copy of the Debtor's
21 Statement of Intent is attached to the Declaration in Support of Motion for Relief From
22 Automatic Stay as exhibit F and incorporated herein by reference.

As a result, there is no equity in the Property for the bankruptcy estate. Moreover, since this is a Chapter 7 proceeding, there is no reorganization in prospect. As a result, Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2).

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III.

MOVANT IS ENTITLED TO RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(1).

CAUSE - LACK OF ADEQUATE PROTECTION

Pursuant to the provisions of 11 U.S.C. §§ 361 and 362(d)(1), Movant is entitled to adequate protection of its interest in the Property.

Movant submits that adequate protection in this case requires normal and periodic cash payments, as called for by the Note, plus the repayment of any and all delinquent amounts owed to Movant, including all attorneys' fees and costs incurred in the filing of this motion.

Movant is informed and believes that Debtor is presently unwilling or unable to provide adequate protection to the Movant and there is no probability that adequate protection can be afforded to Movant within a reasonable time.

By reason of the foregoing, Movant is entitled to relief from stay under 11 U.S.C. § 362(d)(1), based upon the failure of Debtor to provide adequate protection to Movant.

WHEREFORE, Movant respectfully prays for an Order of this court as follows:

1. Terminating the automatic stay of 11 U.S.C. § 362, as it applies to the enforcement by Movant of all of its rights in the Real Property under the Note and the Deed of Trust;

2. That the 10-day stay described by Bankruptcy Rule 4001(a)(3) be waived;

3. Granting Movant leave to foreclose on the Real Property and to enforce the security interest under the Note and the Deed of Trust, including any action necessary to obtain possession of the Property;

4. Permitting Movant to offer and provide Debtor with information re: a potential Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss Mitigation Agreement, and to enter into such agreement with Debtor;

5. Alternatively, in the event this court declines to grant Movant the relief requested above, Movant requests that an Order for adequate protection be issued, requiring the Debtor to reinstate and maintain in a current condition all obligations due under the Note and Deed of

Trust and all other deeds of trust encumbering the Real Property, including Debtor's obligations to pay when due (a) the monthly installments of principal and interest, as required under the Note; (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtor in order to protect Movant's interest in the Real Property, including all attorneys' fees and costs incurred in the filing of this motion;

6. That the attorneys' fees and costs incurred by Movant for filing the instant Motion be included in the outstanding balance of the Note as allowed under applicable non-bankruptcy law; and

7. For such other and further relief as the court deems just and proper.

Dated: September 2, 2009

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Attorneys for BANK OF AMERICA, NATIONAL
ASSOCIATION